

**FLATHEAD COUNTY BOARD OF ADJUSTMENT  
MINUTES OF THE MEETING  
JUNE 1, 2010**

**CALL TO  
ORDER**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present were Gina Klempel, Scott Hollinger, Mark Hash, Gary Krueger and Craig Wagner. Bailey Iott, Allison Mouch and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were 8 people in the audience.

**APPROVAL OF  
MINUTES**

Klempel motioned and Krueger seconded to approve the May 4, 2010 minutes. The motion passed unanimously.

**PUBLIC  
COMMENT  
(not related to  
agenda items)**

None.

**JEREMY  
NEWELL  
(FCU 10-05)**

A request by Jeremy & Deborah Newell for a Conditional Use Permit to allow for multiple principal uses on one tract of land. The property is located within the Lakeside, SPEC-COM (Special Commercial) Zoning District at 7220 Highway 93 South.

**STAFF REPORT**

Allison Mouch reviewed Staff Report FCU 10-05 for the Board.

**BOARD  
QUESTIONS**

None.

**APPLICANT  
PRESENTATION**

Jeremy Newell said they decided to save the building instead of tear it down and was available for questions.

**BOARD  
QUESTIONS**

None.

**PUBLIC  
COMMENT**

None.

**BOARD  
DISCUSSION**

Hash clarified the findings of fact with Mouch.

**MAIN MOTION  
TO ADOPT  
F.O.F WITH  
THE DELETION  
OF FINDING #2,  
AMENDMENT  
OF FINDING #8  
AND THE  
REMOVAL OF  
CONDITION #3  
AND #7 AND  
APPROVE  
(FCU 10-05)**

A motion was made by Mark Hash and seconded by Gary Krueger to adopt the staff report as Findings of Fact with the following changes:

**Finding #2** - ~~The small red storage shed that was recently moved onto the property will be required to be relocated because it currently encroaches in the side and rear yard setbacks.~~

**Finding #8** - Signage for the multiple commercial uses is acceptable because the existing on-premise signage appears to comply with the applicable zoning regulations ~~and all future signage will be required to comply with the regulations. , and because the off premise sign currently in violation will be required removed as a condition of permit approval.~~

And the removal of Conditions #3 and #7 as follows:

**Condition #3** - ~~The small red storage shed shall be relocated on the subject property in compliance with the applicable setback requirements of the Lakeside zoning district [Section 3.42.050(2)].~~

**Condition #7** - ~~The large off premise sign advertising the Blacktail Chalet that is located on the property across from the Mercantile building shall be removed within a reasonable timeframe to comply with the off premise signage regulations applicable in to the Lakeside zoning district.~~

**ROLL CALL TO  
ADOPT F.O.F  
WITH THE  
DELETION OF  
FINDING #2,  
AMENDMENT  
OF FINDING #8  
AND THE  
REMOVAL OF  
CONDITION #3  
AND #7 AND  
APPROVE  
(FCU 10-05)**

On a roll call vote the motion passed unanimously.

**ROBIN STREET  
AMENDMENT  
TO FCU 07-03  
(FCU 10-04)**

A request by Robin & Joyce Street for a Conditional Use Permit for the expansion of an existing gravel pit on property within the Evergreen, AG-80 (Agricultural) Zoning District. The property is located at 1414 Rose Crossing.

**BOARD  
DISCUSSION**

Hash recused himself because of a conflict of interest with this application and because it was the last item on the agenda he asked that he be allowed to leave the meeting.

Klempel disclosed she owned a gravel pit but had no personal or financial gain in this application whatsoever.

**STAFF REPORT**

Allison Mouch reviewed FCU 10-04 for the Board.

**BOARD  
QUESTIONS**

None.

**APPLICANT  
PRESENTATION**

Robin Street explained why he applied for the expansion of his existing CUP, what the acreage will look like after reclamation and what steps needed to be taken with the expansion of his CUP.

Gary Landsaw, project manager for Ames Construction, wanted to modify the working hours to match the hours MDT allowed for the bypass project which were 6 am to 10 pm. He did not anticipate working the pit that late. They would like to start at 6 in the morning, maybe modify the hours from 6 am to 7 pm. Plus they wanted to work Monday through Saturday instead of Monday through Friday. Those hours would match what the MDT allowed for hours on the project. Another thing they would like the board to consider was the possibility of working a night

shift out of this pit rather than a day shift. The reason they were considering this was they were not sure how the traffic interference would be through June and July with the tourism in the area. They felt these hours might be advantageous to them speeding up their operations, reducing the number of trucks on the highway plus reducing the interference of the trucks with traffic. He said the main push to bring out the material would be in June and July. He thanked the board for their time.

## **BOARD QUESTIONS**

Klempel asked for clarification on the hours he requested.

Landsow said the night time shift would start after the heavy traffic flow, possibly 8 pm and run until 5:30 am or 6 am.

Hollinger asked if they were asking for one day a week to run those hours.

Landsow said it could be six days, Monday through Friday.

Klempel said they were thinking about running day and night.

Lansow said no, they would not run during the day if they ran during the night. The purpose would be to get the trucks out of traffic.

## **PUBLIC COMMENT**

Jim Vashro, Montana Fish, Wildlife and Parks, spoke. His department had been working with the applicant on the design of the pond with the intent they would be the site and pond manager. He wanted to voice his support for the application. From the department's stand point, the more water in the pond, the better and he went on to explain why. He brought up three other ponds they have in the area and said it was heartwarming to see families use them to fish and explained the constraints of time needed to visit other fishing areas. He said they were trying to schedule a meeting with other offices to try to mitigate concerns over access. He was in favor of the application and was there to answer any questions the board might have.

## **BOARD QUESTIONS**

Krueger asked if Vashro was representing the Fish, Wildlife and Parks this evening.

Vashro said yes.

Krueger asked if it was common for Fish, Wildlife and Parks to comment on gravel pits. Vashro commented on a fish pond, had

he commented on any other gravel pits as far as they dug into water.

Vashro said they had given comments on gravel pits relative to impacts on ground water and wildlife that might be using the area prior to excavation, but no, this was a little out of the ordinary.

Krueger asked if the comments had been positive like the public comment just given.

Vashro said generally what the department did rather than say positive or negative, they would point out the potential impacts and let the board choose to go which way they wanted to. They generally did not say whether they oppose or support an application.

Krueger said that they did not see any impacts from this gravel pit on the water.

Vashro said no.

Krueger said but they might from other gravel pits on the water.

Vashro said depending on the location.

Krueger asked how they told the difference.

Vashro said they needed to look at the ground water. In general, they had not commented on ground water type issues because most of them had been more upland. Generally, the comments which had been given in the past would have been relative to displacement of wildlife. He asked if that cleared up any concern Krueger might have.

Krueger said it frustrated him. It seemed as if Vashro was standing on both sides of the fence a little.

Vashro asked if he had any more questions.

Krueger said he didn't see how they told difference from the impacts from this gravel pit as the impacts from another gravel pit that might be further up the line. He had read some of the comments. That was why he hoped Vashro would be here so he could ask the question. He asked if they had done an

environmental assessment of this pit as compared to any other pits.

Vashro said DEQ did the environmental assessment and Montana Fish, Wildlife and Parks had some input on that.

Krueger said he understood that but he was looking for how they could tell a good gravel pit from a bad one.

Vashro said they treated each application on a case by case basis. In general they had not commented on gravel pits because they had been in more developed areas, displacement of wildlife had not been a big issue but they would raise that concern if it occurred. The way they approached most developments was to say these are the resources there, this is the impact which could happen, and it was the board's choice whether to proceed or not. In this particular case, they would end up with a family fishing pond which they saw as a positive.

**STAFF  
REBUTTAL**

Grieve wanted to address the issue raised about night hours of operation. The planning office performed a review based on the criteria. In this case, one of the criteria was potential impacts based on inappropriate hours of operation. An application was made by the applicant and that application contained information such as proposed hours of operation, something which was a criteria of review. The critical concept here was that the reason why adjacent property notifications were sent, the reason why notice was put in the paper was so that people in the area, in the neighborhood can be aware of what was going on. If they wanted they could stop by the office and have a look at the application, they can see how they feel about it. So what had been proposed at the meeting regarding night hours of operation was a pretty substantial change. Again, staff did not have an opinion on whether or not that was good or bad, what they did have an opinion on was in administering a process of review, the public had right to the information regarding potential impacts of the application. Extending hours of operation by an hour or two in the beginning of the day or the end of the day was something that was not such a substantial alteration and couldn't be subject to their review here tonight because this meeting and this public hearing had been noticed; therefore the public had the right to attend. The change to potentially not doing anything during the day but doing it at night could, in fact, drastically alter the impacts to neighbors if, for example, someone stopped by to look at the application and they happened to work

nightshift or dayshift and they had weird sleeping patterns, they might have stopped by, looked at the application, seen the hours of operation, and said "Yeah, generally I'm ok with this." Allowing night operations would be an alteration that staff would be interested in making sure had adequate review, because it was a criteria for review. Staff would have difficulty with the board allowing for night operations here, tonight, without that information being available upfront and being available for review. Again, he wanted to stress staff did not per se have problems with night operations, staff felt it would be critical for the public to have access to that information, because that may change how they felt about the application given people sleep at night. He didn't mean that flippantly, he said the night hours were an alteration, a significant alteration. With that, staff wanted to give that information to the board for their review and for the sake of legal follow up. He would put it back to the applicant to determine if, in fact, that was something they still wanted to proceed with requesting or if they wanted to modify the day hours. Staff fully understood the request and the need for the request, but it would be an alteration to the application up for consideration at this meeting.

Klempel asked Grieve if the applicant had a petition signed by the neighbors that the neighbors didn't mind or in fact preferred night hours of operation today, would they go through an administrative review for that change. Could staff give an approval on that if the neighbors approved? Was there any way to circumvent the process of a 30 day public notice period as long as the neighbors were in sync with it, was there any way staff could get up to speed with in the planning office or was that not something they had ever done?

Grieve said he would not want to step outside of the procedural norms. Because when you start stepping outside of the procedural norms, everyone leaves themselves a little bit in the breeze in terms of what was going on. Again, altering daytime hours of operation, adding a Saturday, that was all subject to the initial application. Going to night time hours of operations was a substantial alteration so he wanted the board to be aware of that fact.

Hollinger said they would need to come back for an amendment to this application, a month from now.

Grieve said if the applicants felt very strongly about wanting to do that, then he thought it was fair for neighbors and people in the neighborhood to have access to the information, therefore, the application would need to be postponed . . . The most legally defensible way to change the hours as requested was postpone consideration of the permit here tonight, which was for the expansion, re-notice it with the new information regarding the possible night time hours of operation, so that the public notice requirements that are under law can be met with the accurate request.

Hollinger asked why the board, couldn't it just be approved and modified with the hours later.

Grieve said that would be an option as well because that would be an alteration to an existing permit. The applicant could come back for another permit to alter the hours of operation because altering the hours of operation would be subject to a new permit.

Hollinger said that was what he was going to ask the applicant. From the applicant's timeline, if the night hour operations didn't happen for a month, how did that fit in with the applicant?

Ames Construction said it would be ok. He would like to see where they would have to go to proceed with the request for the night time hours, but right now they did not need it.

Hollinger said it was something that Ames Construction would like to address given traffic. He guessed first off if he was to go the month of June, traffic wasn't nearly like it was during July and August. If Ames Construction discovered in June he had some traffic issues going on and some safety issues going on, put the application in tomorrow for hours and if he discovered later on he didn't need it, he could withdraw it. But if he discovered during that month of June that hey, this is a huge safety issue, it's snarling traffic, etc., etc., etc. then the mechanism would be in place for that.

Krueger said hours of operation, what had Street's hours of operation at that pit been?

Street said right now they had been from 6 am to 4 pm.

Krueger said they had been starting at 6.



Street said yes.

Krueger asked if they had hauled Saturdays at all during the spring.

Street said he thought once.

Krueger said let him throw the 800 pound reel out there. The hours of operation had been violated. It was just as simple as that. There had been reports that the staff had had that Street was starting at 6 and he was operating before the permit, before the hours of operation in the mornings and operating on Saturdays. If the board said no, they couldn't operate at night, what was to say that they were just going to violate or not violate. He thought that wasn't necessarily a creation Street created here. He believed it was something that was created by the way this gravel pit was handled from the very first. It started out as a small gravel pit that was going to haul gravel less than a mile away. When this board reviewed that at that time, the conditions that were put on were very lax. It was going to be easy to follow the 7 to 7, 5 days a week. Lo and behold, times change, projects that were going to happen don't happen, and you guys are forced to operate under the same operating format that most gravel pits have to operate in the county and that is when MDT wants material on the job, they want material on the job. He guessed what he was looking at was he was in favor of changing Street's hours of operation to correspond with what MDT would like. But, he also was a pit owner and he would like to see that it was understood that all pits run under the same, so that they all run with equal protection from this board and so on. So, what he was suggesting was they talk about their normal, and they had done this on the last gravel pit which was topsoil, was 7 to 7, Monday through Saturday. And then to extend the hours of operation into that 6 o'clock timeframe, he had seen them on LHC runs, these types of hours. They were allowed to start loading trucks for concrete, for asphalt, so that those trucks could be on the jobsite at 7 o'clock which allows about a 6 o'clock start up time. But those are conditioned to, he thought the months of May, the middle of May to the middle of November or September or something like that. He said that would give you your conditions the applicant was looking for hours of operation overall plus the extension and that would give him something he could look at as more of a standard for the area, for all of Flathead County. He asked if Klempel had anything with that.

Klempel said she agreed with Krueger on that point because they have had so many discrepancies on hours of gravel pits, it was all up and down on the charts. But she also felt since they were looking at a time constraint here, this was a bypass and these guys were under pressure from the state and on and on, she thought that if they could extend the hours . . . They were looking at Monday through Saturday, 7 to 7, if that was what Krueger was saying.

Krueger agreed and continued to say then maybe go ahead and condition below that a 6 o'clock start up to haul, for truck, so that I can do it the next time a concrete plant or an asphalt plant or another gravel pit comes forward. We can extend the same kind of thing.

Klempel said they had to load earlier, though. Concrete has to load earlier.

Krueger said that was correct. He said and continue to say they could load trucks at 6 o'clock, they could be loading trucks at 6 o'clock between May 15<sup>th</sup> to September 15<sup>th</sup>.

Klempel said they were in June right now so basically. . . .

Krueger said but that's the kind of hours that LHC or any of the concrete plants are running.

Both Klempel and Hollinger agreed.

Hollinger said they had pits out there that don't have . . .

Krueger said they are all over the board.

Hollinger said the other thing was too, the state had determined appropriate hours for construction to get these things up and done, and the people that are impacted by this whole bypass far outnumber the few that are around the pit. Not that that. . . And it was a safety thing too, the faster the job was finished, the fewer days there were impact.

Klempel said if they were looking at summer hours, she'd like to see them haul a little later than 7 o'clock. We have more daylight hours in the summertime, especially just for this. And

then they could go back to the original suggestion that Krueger had which was a good one. 7 to 7.

Krueger said that was another thing. He wouldn't mind seeing a modification. They just saw Walmart up here require that MDT up at the Walmart addition there, that road going in there, that four lane, they required night time. So, how did that work when the MDT required night time working on the job, and our gravel pits can't haul the gravel out?

Grieve said that was a good question that he could not answer off the top of his head. Because staff had rules and criteria in place by which they had to review and impacts by which they needed mitigate and if, in fact, an individual project were conditioned by MDT to be done only at night, then that was a . . . He didn't have an answer for that, that was a real challenge. He wished . . . That was the accurate answer, he didn't know.

Hollinger said when Grieve mentioned inappropriate hours earlier; you could argue that day time gravel trucks on the road were totally inappropriate.

Grieve said that was why he said staff did not have an opinion on inappropriate. That was what the board needed to find, was what was inappropriate. What staff had an opinion on was having the information up front to review, research the potential impacts of night time versus day time in this particular location, because that was the criteria and then provide that information to the board as well as the public for review as well as their comments for the board to review and then comment on. That was a challenge.

Klempel said in order to hurry along this project, if they did Monday through Saturday, from 7 in the morning to 9 in the evening, at least until this was done, wouldn't that help hurry this process along? She asked the applicant if that would work better. She said let's say the applicant wanted to go for night time hours, but all of a sudden it was thrown out, they were just not going to allow night time hours, would that help them so they could go into that timeframe with a little bit more leniency.

Ames Construction said the Saturday would help.

Klempel said everybody realized that the whole thing was basically for the public good, so to speak. But then she felt every

gravel pit was for the public good because we need the resource. That's just the bottom line. So, she was thinking to give a little bit more daylight hours on this project so that it can get over and done with she thought was a good idea. So the faster it was done, the better everyone was, for the good.

Krueger did not have problem giving more hours, but he believed that needed to be extended across the board. He did not want to give any one gravel pit a special advantage over another gravel pit. So, if there was something in this that they could do that they could make or do a condition that says if the MDT requires additional hours they go to the planning office, they bring that request to the planning office and staff gave it an administrative conditional or something like that, beyond that 7 o'clock. Was there a possibility there?

Grieve said he was not familiar with a procedure currently which would accommodate that. An administrative follow up to an existing CUP. He understood the concept Krueger proposed, he was not familiar with how that . . .

Hollinger said what he thought what they had to do was, he thought what Krueger was talking about was policy. He thought that if they established a policy, then if there were someone else with a pit who discovered that, because of the hours they have it was constraining them they could come back to the board and they could. . . yeah, you're right, but they didn't have a blanket way to address it. We just have to have, unfortunately, anyone come back and ask for an amendment to their conditional use, and this was their policy now. He thought Krueger was right, they needed to establish it because there are things that have a greater influence or effect out there and one of them is just the timeline of some of the construction projects. And then the demand and some of them that were there where they can't even be operating during what would be called business hours or daylight hours, they have to be done later on. He thought they would just see more and more of that, where it was just the time line was set so that the hours were off hours and reducing the impact in the traffic and things like that.

Ames Construction said wouldn't the board like to let the men start at 6? That was a nice time in the day on the roads around here, at 6 to 7. If you could pull the hours from the evening and put it between 6 and 7 in the morning, the lights are still blinking on main street. You go through Kalispell at 6, 6:30 in

the morning, it was a straight shot right through it, even in the summer.

Hollinger agreed. Daylight hours. . .

Ames Construction said that was something they could do here, wasn't it? If they chose to go from 7 to 6 and add Saturdays?

Klempel said they were now from 6 to what?

Hollinger said 6 to 9.

Klempel said another thing they had to remember was the planning office also had to take this into accountability was our climate was not construction friendly. There were many, many days that were rainy and or snowy and or . . . and a lot of times people had to work around that and that was not the easiest game to play. So that was something else they needed to be looking at as far as a plan. And that was her take.

Grieve said the only thing he would want to follow up and say was again, what staff did was review the criteria which was immediate neighborhood impact. So, staff came to the board and these were issues such as excessive generation, noise or vibration, dust, glare, heat and one of them was inappropriate hours of operation. Although, he completely understood what Krueger was saying about the interest to standardize hours of operation for all gravel pits. If you had a gravel pit which was surrounded by nothing and nobody, from there to the jobsite, versus one that happened to be located in the middle of a residential area, and it was dense residential all the way to the jobsite, those were two different circumstances whereby hours of operation for one may be inappropriate for the other. As a consideration of the immediate neighborhood impact, because the immediate neighborhood was different. He wasn't disagreeing with you because he understood what they were saying about also the interest to standardize.

Krueger said well this pit was a perfect example of that because at one time, the gravel was going to go a mile away and it could have hauled there 24 hours a day and nobody would have noticed because he could have drove across his own field. And the thing about it was, so we could guess what job they were going to go to, but we have to look at it globally. All of our gravel pits deserve to have the same operating hours in Flathead

County to be able to be competitive on any job that there was out there. I mean, they are all competing for all the same number of jobs and if we give them . . .

Grieve said and that was for the board to decide, not staff.

Krueger said if we sit here as a board and give special advantages to one gravel pit that we don't give to the other, you know. This night time operation, I remember sitting back there proposing it. And I got, you know . . . it was like Oh my God! You know, you . . . out in my area.

Grieve said he just wanted to throw out; appropriate was for you guys to decide. And that's, I just, my comments were based on the criteria which were neighborhood impact and standardizing always when you have two very different neighborhoods maybe challenging, but if in fact the board feels appropriate is standardizing because of the concerns they were eliciting, that was their decision, not staff's and that was their decision.

Hollinger said he thought they could, you know, when Krueger was talking about standardizing, it was kind of like the lighting thing here where . . .

Klempel agreed.

Hollinger said downward cast lighting.

Klempel said Gary, (Krueger) whoever gets the red headed step child and it's got to stop, you know, she agreed.

Krueger said like he said, he was sure there were times that we need the, when there does need to be more hours of operation, I and I do see that they didn't, it wasn't asked for in the beginning, that he could read in there, so, I hate to give something, I thought that was what Grieve was alluding to, about night time hours. You know our standard hours that we have done on the last gravel pit or last soil and he didn't even ask for it, was 7 to 7, six days a week. I believe I'm comfortable as well, only moderately comfortable, as an operator, with 7 to 7. I do think that there needs to be the early start up for the, for concrete plants, batch plants. I think these guys can qualify as early start up. They are just hauling it out, not starting a crusher. They're not starting that noisier stuff, they're down in a hole. I'd like to see them be able to get started at 6, get the stuff on the job by 7,

or whatever. I'd be really comfortable with those hours of operation. And I'd be comfortable with imposing them on the next gravel pit.

Klempel said Monday through Saturday.

Krueger said Monday through Saturday.

Hollinger asked what hours he said.

Krueger said 7 to 7 was the normal, and that means they could start a crusher down there 7 if they wanted or whatever. 6 o'clock they can start loading trucks and getting them out of there. Now, something that has come up in the past, is, what is hours of operation. And this was a long discussion about fueling, working on equipment, stuff like this. Those are not operationally hours, is that correct? If they're down there fueling their trucks, that's not considered operations.

Klempel said that was considered maintenance, wasn't it?

Hollinger said I think our understanding of the operations was if you are moving gravel, and if there is gravel being moved that was operations.

Krueger said if they were down there doing maintenance, or fueling their trucks. . .

Hollinger said you can't have an hour of operation if you have a flat tire. You can't have 7 o'clock hour operation that was when you were supposed to start moving product and move gravel.

Krueger said so maintenance on equipment, fueling the equipment, is not during operation, is not operations. They can do that all night long if they need to.

Hollinger said yeah.

Krueger said okay.

Grieve said he would urge the board to clarify that as a part of the condition.

Krueger said they would.

Grieve said simply because that level of detail right there is not contained anywhere in the regulations and we want to have it on record so as to maybe use it in the future as well.

Krueger said okay.

Hollinger asked Krueger if he was taking good notes.

Krueger said perfect.

Grieve asked if they were still at this point discussing the seasonal change, normal or Monday through Saturday 7 to 7 with seasonal changes to start earlier. Is that still part of the . . .

Krueger said seasonal, and that was for loading trucks and stuff. That isn't starting a crusher and that doesn't allow anybody, they don't start crushers, but that allows them to start to load trucks and stuff like that to get them out of there. Is that written down kind of? You got May 15<sup>th</sup>?

Grieve said he had kind of been scribbling as they went. It was May 15<sup>th</sup> to November 15<sup>th</sup>, then it was May 15<sup>th</sup> to September 15<sup>th</sup>, Monday through Saturday, it's okay, he was just trying to keep up. So Monday through Saturday, 7 to 7 was standard. Then seasonally, May 15<sup>th</sup> to either September 15<sup>th</sup> or November 15<sup>th</sup>, it was 6 to 7.

Krueger said let's go November.

Grieve said you need to make the motion, not me.

Krueger said just so you're writing it down, I'm not scribbling anything.

Hollinger said how about it we have it follow just the change of daylight savings time.

Krueger said that was fine with him.

Hollinger said then when they go to daylight savings time, is when the hours change. That makes more sense to me.

Krueger said that's perfect. Did you get that BJ (Grieve)?

Grieve said pardon?



Krueger said we were talking about making those changes at daylight savings time.

Hollinger said when daylight savings time changes was when those hours change.

Krueger said that way it was a standardized day.

Hollinger said and everybody else is working around, can work around probably whatever else is changes based on daylight hours.

Grieve said Monday through Saturday, 7 to 7 normal operations. During daylight savings time, Monday through Saturday, 6 to 7.

Hollinger said that works. That was easy.

Klempel said Monday through Saturday.

Krueger said yes. . . . Do you want to work on night time stuff or some language?

Hollinger said I think maybe we'd add one more condition, I think we need to just have them come back and say here's what we'd like. We'd like to go to night hours. Our drivers have reported back to us that the streets are crowded, it's a safety issue. We'd like to move, we have approval from the state and then I think we can, that's the time we can create another policy type condition.

Krueger said absolutely. I'd like to see something like that 'cause I'm sure like that Walmart project, I'm sure that any of those, anybody would like, any of the other gravel pits would like the same condition. Something to do with . . .

Ames Construction said I was just wondering do you want us to go through a 30 day newspaper, public comment deal on that or do you want us submit something like that or . . .

Hollinger said I think the way, I mean, if they put in an application tomorrow for a modification to this conditional use will that be heard then beginning in July?

Grieve said no, you get dropped in the hopper because we have to review it and we have to have time to do notice and everything like that so it would, July 2 is the next deadline coming up and that would be for the, I believe that would be for the August, no, excuse me, for the September meeting. That's a long ways off. We can't do it administratively though and that's a substantial alteration.

Ames said you couldn't do it in a matter of weeks.

Grieve said no. In fairness, we have received complaints about the hours of operation. No zoning violations, because no signed zoning violations have been submitted, therefore we have not taken action on enforcement. But we have received complaints, therefore there are people who are interested in the topic, clearly neighbors and what not and it's really only fair to give them access to that information.

Hollinger said is it a complaint because it was a nuisance or were they just watching their watch?

Street said he could answer that, it was the neighbor across the river who didn't want the parking lot next to his fence on the neighbor's property. Bob Lovejoy owns that down below and it's in the subdivision review I think. Used to be Lloyd Tract's place and that's where the trail in the parking lot comes in and he doesn't want it across the fence from him. He's called to plenty of departments. That's kind of the issue, it's not the noise issue or the hours issue, I don't think. It's the, I don't want the damn thing across the fence from me issue.

Hollinger said then let me ask that question again. In general, are the calls that you get on gravel pits about hours of operation clock watchers or nuisances?

Grieve said I couldn't speculate on that. If we get a call, we get a call and we have to treat everyone the same. We don't make a judgment on why they are calling.

Klempel said even if you have the same party that calls over and over and over . . .

Grieve said we just receive phone calls and take action based on standard operating procedure.

Klempel asked if you keep a log on the same person who is calling in all the time.

Grieve said we have logs on all the calls we receive.

Klempel said okay, thank you.

Hollinger said so in other words, unless we address that tonight.  
..

Klempel said it's dead in the water.

Hollinger said it can't be done on this project.

Klempel said the only thing they could do was extend the hours from 6 in the morning to 9 at night that was all they could do right now. That's it.

There was an inaudible sentence from both Krueger and Hollinger.

Klempel said why not? You mean go to night time operating hours.

Hollinger agreed.

Krueger said why can't we? We just have to give the policy of how we are going to do it.

Klempel said under special projects, that type of thing?

Hollinger said I think it is a safety thing too.

Klempel said I agree, completely. I do.

Hollinger said I think it is a safety and it's an impact to the public.

Krueger said do it with a . . . If they want to run night operations, that they advertise it for . . . How many hours are we required to advertise for these meetings? 48 hours? What's the advertisement for like, this meeting? Are we 48 hours . . .

Grieve said advertising in what? Are we talking in the newspaper?

Krueger said yeah, notice of this meeting.

Hollinger said how many days. . .

Grieve said adjacent property notification at, well . . .

Krueger said he just wanted to know in the paper.

Mouch said I believe it is two weeks. This was posted . . .

Hollinger said I think it's in our book here.

Mouch said legal notice was posted on the 16<sup>th</sup> of May. Adjoiners were sent a week earlier on the 5<sup>th</sup>, over a week earlier.

Grieve read: zoning administrator shall set a date for a public hearing and publish a public notice which advertises said hearing before the Board of Adjustment. Newspaper is 15 days prior to the meeting of the Board of Adjustment, but there has to be some reason for that. Meaning there has to be something for the public to review if they read that notice. Same with adjoiners are sent 15 days prior to the review by the board. But we typically send them a little, it's no less than 15 days so we typically send them more than 15 days in advance. It can be anywhere between that 15 to 30 as long as we are no less than 15. But, so, but just saying there's going to be a meeting, there has to be something . . .

Krueger said what he was going to say as a condition, like, something like this is that night operations may start after public notice of 15 days to the public that they were going to start so that the public knows that they're going to start night operations, and then night operations. . . .

Grieve said wait, whoa, whoa, whoa, but what would the public do?

Krueger said tell them they are starting them.

Grieve said no, no, no, I know, but what recourse would the public have if in fact, let me give you the flip side of that. Let's say tonight hours of operation were, night hours of operation were allowed as a condition of approval, right, in some manner. It would be a very strong legal argument that in fact was an

alteration of what was originally. . . You see, night hours of operation tonight was the very first we heard of that. So, so that alteration would, would be. . . There was no notice on that application. You see what I'm saying? There was no ability for the public to review that and potentially have comments, therefore that would be a strong . . . It would be . . . That information was not available up front. Now, but what I'm saying is, let's say you put a condition on there that said you have to give public notice. Okay, so you're just giving public notice but the public has still not had an opportunity to, to review it and provide public comment prior to a decision being made. Because they didn't know there were going to be hours of operation and now, they're just being told there will be night hours of operation.

Krueger said right, but in our book here, we don't have a standard hour of operations, 7 to 7.

Grieve said that was correct.

Krueger said we've been imposing them on gravel pits. They can run 24 hours a day. If we put no 7 to 7 on there, they're allowed to run 24 hours a day.

Grieve said that was correct, you could do that. The reason I brought this up is simply because, typically an application is made and the public needs to have access to that because they may care, they may not care based on that information. A small alteration like adding an hour on the front or subtracting an hour on the back, etc., that's, and in fact allowing them to run 24 hours a day, that's within your . . . That's within your jurisdiction. All I'm cautioning you is, that if I was a neighbor and went in and saw an application that said 7 to 7 and the next morning I read in the paper that it was 24 hours a day, I would have a strong argument that that was not the application I went and looked at in the planning office.

Krueger said correct and all we would have to do was not put any hours of operation condition on this and they're running 24 hours a day.

Grieve said we reviewed 7 to 7 so that was why we proposed the condition. If you so chose to take that condition off, then I guess in fact, maybe they could run 24 hours a day.

Krueger said that was actually the norm until just here 4 or 5 years ago.

Grieve said I am only trying to advise what I feel is reasonable and so you guys are the board. You can do what you want.

Krueger said all I'm trying to do is find a method to allow these people to operate night operations, if Montana Department of Transportation wants it, or if the project needs it, or for some reason without going three months in to the planning process.

Grieve said and there is a mechanism for doing that. There is a procedure in the regulations for doing that and that is the review process. In this particular case it is challenging because of the amount of time it takes, but there is a review mechanism in place for that concept. It's what we're going through right now.

Ames Construction said if they chose to take it as an agenda item and the next meeting, extending the hours for all gravel pits, and publish that in the paper, I mean just to be able to run at night. . .

Hollinger said and BJ (Grieve) I'm looking at this, the conditional use board of adjustment talks here about taking an application, being accepted by you, you give it to your staff to review, and you establish a date for the public hearing at least 15 days prior. Why can't you do that?

Grieve said because that would be really unfair to people who just dropped applications for the most recent deadline that have to be heard in August when they might want to have been heard earlier. We have to treat everyone the same. If you submit an application to our office you get dropped into the matrix of deadline dates and meeting dates. We treat everyone the same. If someone walks in and we say, oh you're a gravel pit, now if you guys want to say that. . . I'm not telling you, you can't. As the board you have ultimate authority. I'm simply trying to advise you on what seems to be fair and defensible. But you guys. . . If you'd like to set as an agenda item on the next thing and instruct us what to do, we'll do it. I'm not here to argue with you, I'm just here to let you know the consequences of what you are talking about, the potential consequences.

Hollinger said I guess first off, I'm not sure how much staff is going to have to do in a report there, and it's not to minimize

what you guys do. But, if we're just talking about one thing which is basically going to be some feedback from the applicant saying hey, we don't need it. It's going smooth, we found a short cut, there's no cars, blah, blah, blah. Or they're going to say hey, you know what? We have discovered that it's taking us 16 hours to do what we could do in 8 hours if we worked nights.

Grieve said, again, please don't misunderstand me. We could care less whether they run at night. That's not the issue. The issue is simply that the procedures and processes in here for making an application and the public having access to that application in this forum which is taking place tonight, that that process is abided by and respected. That's all we care about. You guys decide what is appropriate versus in appropriate.

Hollinger said I guess along with that, if anybody was interested, they certainly should have been here tonight to talk about . . .

Grieve said but they might not have had any idea whatsoever there may have been night time hours of operation. So they might have said I have no need to go to that meeting.

Hollinger said we could have, we could be talking about all kinds of things here like saying we don't really care if there are larva growing on the water, let's turn it into a mosquito pond.

Grieve said okay.

Hollinger said they should have shown up.

Grieve said okay.

Klempel asked where is their accountability as the public.

Grieve said that's fine. Again, I'm not . . .

Klempel said I know.

Hollinger said and here's the . . .

Grieve said don't get upset with me, I'm just . . .

Hollinger said, but I, it's not upset with you, it's, I guess I'm upset with kind of the long detour that everything has taken how where everything has to be done around where people are

comfortable and happy, productivity be damned kind of thing. You know, if your productivity, if there's productivity it becomes incidental to the process. Again, if they think this has an impact on them, then they should be here. Hours, roads, whatever. Water quality, everything.

Mouch said from a staff perspective, if I were to review a different hour of operation proposal, it would change more than just the numbers on the page because what was reviewed was no lighting because there wasn't any need for onsite lighting. There's not lighting right now. So, overnight operations would require lighting. There are many other all night operations in the area so there might be conditions or mitigation measures that need to be considered by the board to condition it appropriately not to approve or deny it. But, just to take into consideration on that level. So there, it's not, it might have a little bit more impact on the actual level of review than just changing.

Hollinger said do we not have any all night or night time operations going on in the valley at all.

Mouch said not . . .

Ames Construction said actually you did address lighting a little bit in #10 that says no exterior lighting has been proposed or appears necessary as part of the request to expand the existing permit. If exterior lighting is necessary in the future, this lighting would be acceptable because it will be considered to adhere to the standards set forth in section 5.12 in the zoning regulations.

Mouch said that was a catch all. I mean . . . Yes, you are absolutely right.

Grieve said if you guys want to grant night hours, have at it. I'm simple saying that a strong case could be made that there was not ac. . . . that it was not reviewed by staff and there was no access to that information and the impacts of night operations are different than the impacts of day operations.

Klempel said are the MDT hours set by state law. Does anybody know? Or is that just something that MDT just pulls out of the hat and says this is what you guys can do.



Ames Construction said I don't know. On our contract they're set from 6 till 10 o'clock at night.

Klempel said from 6 to 10.

Ames Construction said 6 to 10. If we were going to try to run night hours, we would also have to get approval from MDT that . . . It's all in the project. The project manager, Dean. It needs to have written approval from the project manager.

Klempel said so; it really wouldn't be out of character for this board to say they can run from 6 to 10 and be in unison with MDT hours. I mean, I can't see where, it doesn't seem like we would get hammered so terribly bad, you know. If we did that because we would want to be in unison with what the state has set as a standard for commercial operations, so. Is that something we can, you know?

Grieve said you guys decide appropriateness of appropriate hours of operations.

Klempel said okay.

Grieve said we've stated our position, and it's not our decision to make, it's yours, so.

Klempel said okay. I think it's a good idea. . . What do you think, Gary (Krueger)?

Krueger said I come from the west valley. If you're going to be as brave when we get into the west valley, I haven't got a problem. That's all, yeah, that's all. There's going to be a certain number of people when the conditions come back and we change those west valley pits to 6 to 10, you're going to hear a lot of complaining. Now if you're going to, if you're willing to do that, I haven't got a problem with it. It's logical hours, it's day light. Now, I grew up as a farmer. You work daylight to dark. So. I haven't got a problem with those. I . . .

Ames Construction said Gary (Krueger), I'm like you on every project that either the state or private, they set different hours . .

Krueger said yes they do, and I'm all for the pit owner being able to modify his hours if he has a job that requires him to get through a traffic light or get through an area of town or get

somewhere at night because, quite honestly, if you are in your house and you are sleeping, those trucks that are driving on the road aren't bothering you. If you want to have your window open, the nice hum of your tires will help you sleep. But. . .

Hollinger said yeah, and I, I mean the Schillinger pit over by me, they don't have any hours because I know I get up in the middle of the night and hear them digging around out there but I go back to sleep.

Krueger said, you know, the thing about that, Gina (Klempel) do we want the crushers running until 10 o'clock at night? That's our only question.

Klempel said no. I'm sure the neighbors wouldn't appreciate that one. But we're not talking crusher here.

Krueger said well, see that's . . . If we had . . .

Klempel said oh I see. You're getting into a whole different addendum now.

Krueger said well, no that's what I'm saying. If you say 6 to 7. . .

Hollinger said it's a disadvantage. When your gravel pit's running . . .

Krueger said 12 hours a day for crushing and running, is fair.

Klempel said yeah.

Krueger said so that's 7 to 7. The hour before is loading trucks, that's different, that's quieter. If you want to extend the hours two or three hours after that for loading trucks, guess that should be stated that way is the way I think I would do it. I mean so when another application comes in for crushers and stuff running . . . It's just a thought. . . . (To Hollinger) You didn't think anything on night, or? You haven't got any idea for what to do for night operations?

Hollinger said as far as crushers go?

Krueger said no, for these guys.

Hollinger said you know, I see a lot of benefit to the night operation. I would probably say more benefit than not. And it's really based around everyone's safety and number two around efficiency. Like I said, if it takes 16 hours to do what they can do in 8, because your drive time doubles.

Klempel said yeah, with the stop and go.

Hollinger said you don't have to worry about kids walking to and from school and the rest of, you know, the things we've heard about in the past. And, you know, it might have incidental things running. . . There's somebody out driving around in the middle of the night that needs someone to come check up on them then we've got people out on the road that can radio in and say, we've got someone over here that needs a little help.

Klempel asked if they could take a 5 minute break.

Hollinger said they would meet back at 7:30.

***The meeting resumed at 7:30.***

Hollinger called the meeting back to order.

Hollinger said I guess maybe just to get a little bit more of handle on what we have been discussing is maybe ask the applicant if there's any additional comment, feedback information that you'd like to supply in regard to that.

Ames Construction said as far as the hours?

Hollinger said sure. Hours. . .

Ames Construction said we generally work a ten hour day, within those hours that are set. Sometimes we go to twelve, but you start, your production starts to drop off, the guys get tired, you have other problems, so we won't ever get to a point where we're working a full 14 hour day or anything. The nighttime hours is beneficial for all the reasons that have been discussed. For both us and I think the public in Kalispell. If there's any way to do that, and not violate your rules and things . . .

Hollinger said is there going to be work on the bypass being performed during the night hours also or you strictly hauling material for the next day.

Ames Construction said if we haul it, there will be work on the bypass itself.

Hollinger said so they're going to have lights and they're going to be up and going.

Ames Construction said yeah, the light placement and everything will be selected on which way . . . .

Hollinger said but I mean, my question is, were there going to be, was there going to be other work besides simply to haul materials.

Ames Construction said there would be if we hauled at night and this is all conditional on what the Department of Transportation will allow also right now.

Hollinger said who makes that call. Who makes the request and who makes the decision.

Ames Construction said we would make a request to Dean Sackett, the project manager for the Department of Transportation. Whether he actually makes the decision or has to pass it on up the line, I'm not sure.

Hollinger said and your request would be basically the same as what you've said here.

Ames Construction said yes.

Hollinger said based on traffic and those circumstances, it's better to work night shifts. Is that correct?

Ames Construction said yes.

Krueger said if you were to work a night shift, what would, would that include Friday nights and Saturday nights? Or are you talking Sunday night, Monday night, Tuesday night, Wednesday night. . .

Ames Construction said I actually like starting on Sunday nights, to where you give the people Saturday night off but if, we could be flexible on that. Right now, the state will not allow us to work on Sundays without written permission, so right now, we

would not be starting say, on Sunday night. We'd probably be working from Monday night through Friday night, getting off on Saturday morning.

Hollinger asked if there were any other questions.

Klempel said not right now.

Krueger said I have no further questions.

Hollinger said does anyone want to make a motion.

Krueger said sure. I would like to state in front of the motion though how I would like to change some conditions, if that's all right.

Grieve said procedurally conditions come after findings of fact are adopted because conditions are based on findings of fact.

Krueger said okay, then I'd better look at my findings of fact in here. . . Hours of operation.

Klempel said it's 19 or 20, it would be 20.

Krueger said actually we got kind of singled on this hours of operation. I guess I have another question. I see a, a road for approach for permit but I don't see a final inspection on the road approach permit. Is that been approved?

Mouch said yeah. I talked with Patti and she said there wasn't any problem with it and they've been on site and conducted the instructions, so, yeah I called.

Krueger said there was going to be painting put on it and stuff, I think that's their standard, isn't it?

Mouch said right, my understanding is they were recently out on site and that was the approach is going to be paved.

Hollinger said so the paving part of it was also . . . 'Cause there was a comment in there about some painting that was being done. Is that part of the approach permit?

Mouch said well the original permit, the original review did not require the approach be paved because the road is going to be

removed upon completion of the gravel extraction. So, that was the reasoning behind not paving it with the original permit. There wasn't a, I just spoke with Guy today about kind of the new concerns about the dust, and Rose Crossing and the impact to the road, and so he had said that was an agreement between Road and Bridge and the Streets that that approach will be paved now. We can certainly address that in the conditions, but we'll have to create a finding of fact to reflect. . .

Street said in order to get the trucks out on Rose Crossing in a better manner, we had to widen out the permit, we widened out the approach. Otherwise they were coming out and going too sharp there and that's why the road is broken down on the other side and that will be cut out and repaved where that road is broken down on the north side of Rose Crossing right where the trucks come out. One didn't get their brake off and went and dropped it down, but that will be taken care of. That approach will be pulled back to whatever the county wants to be done and it will be paved. Right now the approach is wider than, you know, covers more ground than it probably should, but that's to get the long trains out and get them on, get them lined up the road faster. It's more of a safety issue.

Hollinger said is that part of then the permit. The approach permit, is that stated within that approach permit?

Street said it's, the approach permit will be put back to wherever they want it when it gets, however they want that approach permit fixed up when it gets done, the widths and pavement like that will all be done however they want to get it completion. We needed to expand it to get those trains out on the road rather than making a right hand turn make a little bit. I think it was about ten feet on each side of the original approach. And that approach was put in there by the county and they take all the gravel out of that and gave the gravel to sidewalk in order to put the gravel on Rose Crossing when they graveled it. The pit run came out of that pit there and the county road department actually put that approach, we agreed on that approach at that time.

Hollinger said okay.

Krueger said there's a condition in here for lighting, isn't there?

Klempel said there is.

Hollinger said it looks like the last one.

Krueger said so we have the lighting one taken care of if we do night hours, and we actually talk about 17 says noise and vibration are reduced or buffered from all sides. So. . . And you, what you did on finding 20 was on their application, is that where they had requested . . .

Mouch said I believe the original application said the hours of operation would be the same as the original . . .

Krueger said but they have requested, but at this meeting they requested additional hours.

Mouch said correct.

Street said he let the planning office know about two weeks ahead of time that Ames would be here to talk about the extended hours.

Mouch agreed. We just weren't aware that, the night hours.

Hollinger asked how deep is this pond going to be.

Street said it's going to vary somewhat but at the one end, will be 15 to 18 feet of water, then there is the side walls 8, 9 feet. One is a little higher; the side walls are a little higher on the east end than they are on the west end. But, going down through the water level, and then they are coming in with an excavator and going as deep as they can. They're just getting started on going deep. Do you know how deep you are on the west end? The deepest end?

Ames Construction said, let's see. 17 Feet below water level. On most of it we hit clay so; some of it was only like 9 feet. The deepest part was about 17 feet below water level and then 9 foot up to original ground level there, so. It will vary with the clay sediment area.

Hollinger said okay.

Street said Fish and Game wanted it as deep as they can for the wintering of the fish.

Hollinger said the fish will survive with that good water depth.

Street said yeah, the fish and game will own pond when, as soon as they can take it over. That was one of the donations we wanted to make is to give them the pond and probably, I don't know until it's surveyed out, probably 10 or 15 acres that they will end up with title so that won't cost them anything.

Krueger said how do we change finding 20 since they've changed their proposed hours of operations at this meeting.

Klempel said we can amend it.

Krueger said I'm not good at doing these 20 minute motions, you know.

Hollinger said I think you have to say finding, basically to the effect of because the operating hours will be based on public safety and . . .

Krueger said or should we just take 20 out. Remove 20. Because that isn't the same hours that she reviewed in this deal.

Hollinger said that's right.

Krueger said and we've got it all, all we've done is we've taken comment from the public and everybody that we're supposed to . . .

Hollinger said take the finding out.

Krueger said and so we can just take that finding out. And this is 10-04?

**MAIN MOTION  
TO ADOPT  
F.O.F.,  
REMOVE  
FINDING OF  
FACT #20,  
AMEND  
CONDITION #5  
AND APPROVE  
(FCU 10-04)**

A motion was made by Gary Krueger and seconded by Gina Klempel to adopt staff report FACU-10-04 as findings of fact with the removal of Finding of Fact #20 as follows:

**Finding #20** — ~~Proposed hours of operation are acceptable because there will be no blasting operations as a result of the proposed 2 acre expansion and because operating hours will be the same as those conditioned for the original 5 acre gravel pit.~~



And with modification of Condition #5 as follows:

5. Hours of operation shall be from ~~7:00 A.M. to 7:00 P.M., Monday through Friday:~~
  - a. 7:00 A.M. to 7:00 P.M., Monday through Saturday;
  - b. 6:00 A.M. to 7:00 P.M. Monday through Saturday during daylight savings time;
  - c. Maintenance and fueling is permitted 24 hours a day (as this is not considered part of operations);
  - d. This condition allows for a 12-hour night shift for hauling from the pit, Monday through Friday.

**BOARD  
DISCUSSION**

Hollinger said as a substitution for operations during the day, or.

Krueger said I don't care if they operate day, you know they'd get done twice as quick.

Hollinger said true. He repeated the motion made by Krueger. He asked if there were any further discussion.

Klempel said she had none.

Hollinger said Gary (Krueger) is there anything else you want to say . . . No? . . . I'll call for the vote then.

**ROLL CALL TO  
ADOPT F.O.F.,  
REMOVE  
FINDING OF  
FACT #20,  
AMEND  
CONDITION #5  
AND APPROVE  
(FCU 10-04)**

On a roll call vote the motion passed unanimously.

**OLD BUSINESS**      None.

**NEW BUSINESS**      None.

**ADJOURNMENT** The meeting was adjourned at approximately 7:50 pm. on a motion by Klempel. The next meeting will be held at 6:00 p.m. on July 6, 2010.

\_\_\_\_\_  
Scott Hollinger, President

\_\_\_\_\_  
Donna Valade, Recording Secretary

*APPROVED AS SUBMITTED/CORRECTED: \_\_\_\_/\_\_\_\_/10*

DRAFT